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RESPECT FOR LAW IN THE UNITED STATES

I. ADDRESS BY HON. JAMES S. SHERMAN, Vice-President of the United States.

I feel as though I should first say, "How do you all do?" because you have all been presented to me, not the ordinary procedure,—I am usually presented to the audience. I congratulate Dr. Rowe upon the fact that he does not open this particular meeting of the week's functions with larceny, because the topic for consideration this evening is "Respect for the Law." It would seem to be out of place, under the circumstances, to commit either petty larceny or some crime more serious.

He has attempted, I do not know whether you would call it a crime or a misdemeanor this evening, by intimating to me that he, if not the audience, expects of me something in the nature of a speech. I came here solely with the intention of presiding over this meeting, and I always find a special pleasure in coming to this metropolis of the Keystone State, because I always expect to find, and always do find, audiences made up of cultivated and patriotic people, and I am delighted to find here to-night an exceptionally attractive audience, because so many of them are of the gentler sex.

The program which the president of the Academy sent me contained a very large list of notable speakers, who, it was expected, would participate in this evening's program. The list was made up of statesmen, lawyers, doctors of philosophy, doctors of divinity, doctors of letters, doctors of medicine, doctors of almost everything, except horse doctors,—there are none of those. The program was so expansive that I felt that, even as a presiding officer, I would this evening resemble an Egyptian mummy, in that I would be pressed for time.

But now that I come here, I find that the list has grown beautifully less, and that rather than being pressed for time, I am called upon to occupy more or less time. And I shift from the scene which I have just described to another.

They tell of a lawyer who stood before the court making an argument, in which he went from his firstly to his thirteenthly until

the court dozed, and awakened, and dozed again; and finally the lawyer seemed to awaken himself to a realizing sense that he was occupying quite a bit of time, and he said to the court, "I trust, your honor, I am not infringing upon the time of the court." "Oh, no," said the court, "you have passed that long ago. You are now encroaching upon eternity."

But there is one advantage of the change in program: it gives me the opportunity to have a little bit of a feast with you, and I am going to take advantage of the experience those people had who were present at the time of the Lisbon earthquake, which took place at noontime, and those who refused soup never got the roast. Now, I am not going to refuse the soup; I am going to take the good thing that is offered. Perhaps I ought to say that I am no orator. I do not think I look like one. You know, they once said of old Lord Brougham that no man lived who was as wise as he looked. I do not fill the bill.

Our topic for this evening's discussion is "Respect for Law in the United States." Respect for law implies compliance with the law. It implies orderly procedure. It implies virtue, morality, and isn't it just a trifle strange that they should have chosen the *Vice-President* to preside? I do not attempt to live up to that title. I do not appear as if I did. I have been told that I would appear to better advantage as an advertising agent for a patent medicine.

I went up, a week or two ago, upon the invitation of some New York statesmen, and a few citizens, to deliver some observations at the beautiful little city of Glens Falls, not having been told in advance what my topic was to be. Being just a little bit hurried, overworked, at that time—I am not often overworked—I had thought I would make a few observations on the general subject of the *Vice-Presidency*, a subject I knew a little something about, its limitations of powers and the impossibility of initiating anything. When I got up to Glens Falls, I found I was down on the program to respond to the toast, "The United States," not a contracted subject. So, I find this topic this evening, "Respect for Law in the United States," to be a very broad subject indeed. It is a subject that ought to attract any man, and it is a subject upon which any man, especially one in public life, ought to be able to deliver himself of a thought or two.

We do respect the law in the United States, in my judgment.

Perhaps we have more wholesome respect for it than the citizens of any other government under the sun. I believe that we, here in America, have the belief that our government is best for all, because the sentiment prevails that all should be for the best. Respect for law in this country has grown up through over a century of application of the law. Our government is a constitutional government, differing widely from any of the other governments on the face of the globe. Here there are distinct departments of the national government, each one dependent upon the others. No one department can, as in some of the European countries, proceed with disregard of every other department of the government. The legislative department says what the law shall be; the court then determines whether the legislative body has overstepped its constitutional right, and then comes in the executive. Now and then we hear rumors that one department of the government encroaches in some degree upon the rights of another, but these rumors are not often well-founded, and they do not often last long.

As a rule, in this government of ours, each department concedes and grants to the others the fullest possible degree of the powers which the constitution grants to it—a constitution which, surprising as the fact may be, framed by wise men for the future guidance of the government, at the time comprising only three millions of people and occupying but a limited area, measures up to-day fully to the requirements of ninety millions of people, occupying seven per cent of the area of the earth. It is a remarkable document; no greater document was ever written, and the fact that it lives to-day almost without modification after 125 years, still revered by the people, is the best evidence of the wisdom of the framers of that document.

Respect for the law in this country is founded upon the fact that our laws are based upon this Magna Charta of the people, drawn by wise men, whose ken was even greater than they dreamed, whose ideas of the needs of an increasing people were figured out with almost superhuman acumen.

It is a splendid picture to look back on the great men of the century and a quarter ago, to think of the lives of those men who gave us this American republic, who laid the foundation, the charter, for all our future legislative action; and then to look at those who interpreted that document. Think of John Jay, the first chief justice of the United States. I am particularly proud of the fact

that he was a product of the Empire State of New York. Think of John Jay, who served the country so well, and never better than he did in showing his absolute respect for law and order, as he did in 1794, when, by the manipulation of politicians, by political trickery, he lost the governorship of the Empire State. It will surprise many of you to have the suggestion made that men here, way back in the latter part of the eighteenth century, were politicians who resorted to tricks. The popular belief is that such men never lived until the present day. But they deprived John Jay of the election to the governorship of the State of New York by throwing out, upon technicalities, the return of various counties of the state which would have shown quite a large majority in his favor. Urged to resort to revolutionary measures to maintain his right, John Jay, ambitious politically, then wrote to his wife: "In a little time we will all be returned to the dust from which we came, and then it will be a matter of much more consequence that I had the ability in a trying time to govern myself than that I was permitted to govern the state."

It is that sentiment, predominating through the public men of greatest ability and finest character in this government, that has built up in the generations that have succeeded, one after another in rapid succession, respect for law in this country of ours.

Respect for the law has in large measure built up this country of ours, and we are a great country; we are proud of our country—aye, and we are not unconscious of the fact that we have a right, also, to be proud of the splendid representatives our sister republics send here to represent them at our court. It is a great country—ninety millions of people, three million square miles of area, and 120 thousand million dollars of wealth. And all these people of ours, in their various capacities, are adding daily to the riches of the country, adding to them so greatly that to-day, if we desire to compare our government with any other country in the world, we find that the comparison fails, because we can not make a comparison that we comprehend by talking of any other one country. To make a fitting comparison we must make it with a group of other countries, or else with all the world besides. And while we occupy but five per cent. of the area of the world, and are but seven per cent. of the population, commercially and financially we about equal one-half of all the rest of mankind. Here in this country

of ours each single individual about balances in production and in consumption, three men anywhere else in the world. We have reached these proportions, in my judgment, in no small degree because we have had a proper respect for government and for law in this country of ours.

We progress here with marvelous rapidity. Only ten years ago, or eleven years ago, we were second to Great Britain in the production of steel, and yet we progressed with such marvelous rapidity that to-day we produce more steel than all the rest of mankind put together. We have five times as much life insurance as all the rest of the world, and three times as much savings bank deposits. The savings of our people represented by deposits in the various banking institutions of the country, are more than three times the money in circulation in this country.

How is it possible for us to do business under these circumstances? Because our people have respect for the law, which respect brings confidence in each other, and inspires the confidence of the other peoples of the civilized world. This way: If those who had their deposits in the banking institutions of the country should at any one time demand the payment of these deposits, we could only pay about 28 per cent., about 28 cents on the dollar. We never have any flurries that amount to any serious matter for any great length of time. It is because our people have that confidence in their fellow-man, which has inspired all the respect for constitutional government, and it obtains sane and safe laws.

I believe I am overstepping even the bounds that Dr. Rowe intended. I am taking a little bit longer than he meant I should. I do not want to drive the audience out of the room. I recollect being out in a campaign in a western state some three or four years ago. A fellow-speaker was a distinguished statesman from Pennsylvania. He happened to be the last upon the program that evening, and while he was speaking quite a number of the audience left the room, in order, as he afterwards learned, to catch a late train to some adjoining city. He did not know it at the time. He said: "I notice some of you are leaving. I hope the rest of you won't stay just on my account. It doesn't embarrass me at all; I am quite accustomed to have audiences leave when I am speaking. In fact, where I spoke last night there was no one left in the hall when I finished, except one man, and when I inquired why he stayed he said he was paid to remain and turn out the lights."

I am not going to weary this audience to such an extent to-night, I hope. As I say, I was asked to come here simply to preside, not to speak; but I was very glad of an opportunity to give expression to the belief that is within me—that the greatness of this country is largely dependent upon the fact that our citizens, as a whole, born here, or born under other flags and brought here under the benign influence of those who have lived here for decades, have respect for law, for the rulers of the republic, and they have confidence in their fellow-men.

The further elucidation of this subject, the “Respect for Law in the United States,” will first be taken up, considered and discussed by a gentleman with whom I had the honor to serve on a committee in Congress for more than a dozen years, and whose ability, whose integrity and whose faithfulness to every duty was an inspiration to all his fellows in Congress. He comes from a far-off, western, woolly state, as we are in the habit of calling them down here in the East. He does not belong in the effete East, but I am sure that the effete East will welcome him gladly as one of our own, and we will be truly sorry when we have ceased to hear the voice of Congressman Frederick C. Stevens, whom I now introduce.

RESPECT FOR LAW IN THE UNITED STATES

II. ADDRESS BY HON. FREDERICK C. STEVENS,
Member of the House of Representatives from Minnesota.

At the outset I wish to disclaim the imputation that is placed upon me of being a wild and woolly Westerner. I was born in Boston. I was reared in New England, and I go back every year to put my feet upon the old sod, to swear allegiance to the time-worn tenets of the faith of our fathers. We all do that from the West, and that is why we have grown into one of the most progressive, as well as one of the most representative, parts of this country. Now, I think we all ought to congratulate ourselves that the splendid address we have just listened to partakes of a dual nationality, somewhat Irish and somewhat American. We have had our laugh first, like the Irishman, and have swelled ourselves into a splendidly patriotic frame of mind, just as every loyal American ought to do. And we can all agree with the patriotic sentiments of our Vice-President, and we know how truthful and how necessarily accurate his statements were. Yet there is another side which comes to us in official life, which I wish to present to you for just a few moments this evening, and I assume such was the intent of the committee which arranged the program.

Your committee planned a broad subject, and a short time to discuss it and evidently desired us to present our own points of view and our own personal experiences in treating it. That I shall proceed to do. Now, theoretically, we Americans have, and ought to have, the greatest possible respect for law, because that is the concrete expression of the will of the people, through their own duly organized institutions. We all realize that. And yet, actually, we realize, also, that there probably is not one of the great civilized nations of the world where there is a greater disregard of public authority than in the United States. This is not confined to any one class; it is not confined to any one section, and we have not a monopoly of it in the wild and woolly West. Such a condition is prevalent all over our country, and there is a good reason for it. It is an expression of exactly the same quality which has made our

nation so great, so progressive, so prosperous and so powerful; and that is the aggressive, persistent individualism of every true American; his determination to succeed, his desire, at all hazards, to make his own will, his own opinions and his own desires effective. We see him quite often following the old notion, inherited from the old Italian statesmen, that the end justifies the means. I do not mean to say that such a sentiment is universal. We all know it is not, for the great host of American citizens all over our country have the utmost respect for the law. Yet there is a sufficient class, or I should rather say there are sufficient among our people, who have not the utmost respect—who have, in fact, a disregard for public law or authority that makes this quality characteristically American.

It has been the fashion of late years in discussing questions of this kind, to call the attention of the public to the class designated as "malefactors of great wealth." It has been rather a popular designation, and there is some truth in it—more than there ought to be. Too many of the managers of large concerns maintain distinguished and able legal staffs, not so much for the purpose of advising as to the intent and spirit of the law, as they do to be informed concerning the technical parts of it, how its penalties may be avoided; or, worse than that, to weigh the cost of the penalties on the one hand, and the profits of the violation of law on the other. The organizations of labor have followed, too often, similar lines. In too many cases it has been found that personal and legal and contractual relations weigh too lightly upon them.

In public positions we are painfully aware of many instances where trusted leaders have prostituted their places of honor for their own advantage and gain, which is justly execrated by every honest man and woman in the country. And another class is always before us—the public press. They have taken advantage of their great power in too many cases. They have hewed too closely to the line. They have not sought to carry out their great function always in a fair and just spirit. The desire to sell papers—I will not quote the rest of the expression—the desire to extend their circulation, has led them to do many things in their discussions as to men and measures of public interest, which amount, indeed, to skimming too closely to the edge of the law, to flagrantly abusing the great privileges conferred upon the press, by misleading or inflaming instead of really informing, educating or leading the people.

We had a rather striking illustration of that a year ago in Washington. A letter came from a manager of one of the most reputable monthly magazines in the United States, to one of the most distinguished and able representatives in Congress, stating that in a case which controverted a position taken by the magazines it was not good editorial policy for that magazine to publish the truth about matters of great public interest as contained in the official records of our government, and that letter is embalmed in the "Congressional Record," and speaks for itself of the shame of such management. That illustrates what is too often the situation of many of the most reputable newspapers and magazines of our country.

I think we all realize that these classes I have described are not increasing; that there has been a considerable decrease of them, a great improvement in the conditions in this respect all over our country in the last few years. There has been a general uplift in public and private life. There has been a great improvement in the methods of men of business, of public work, everywhere, and it is a great encouragement to every man who believes in and loves his country to note the wonderful improvement that has been made in these particulars.

There are other classes of cases which come to us in public life, such as you people might not realize as we do, and where there has not been an improvement. It very often happens that good men and good women come to us and urge that public measures be passed for the benefit of the people, as they esteem it, and they urge these with the broadest and best of arguments for the public welfare. But when we show to them that the measures they seek are not warranted or authorized by our constitutional powers, or are forbidden by our constitutional limitations, they esteem it too often no argument why such laws should not be enacted. And too many of them ask us, and even urge us, to violate our solemn oaths of office which we took to support the Constitution of the United States, and seek to have us place such acts upon the statute books, and to have the responsibility of finally determining the validity of those laws passed up to the courts of the United States, instead of insisting upon the performance of duty by those who have the responsibility for considering them at the beginning. I say that has happened too often, and is happening to-day not only in Washington, but in every state legislature in this country; and the classes of our people who appear

to ignore our fundamental laws and duties are of the most respected in our communities.

There is too little respect for our fundamental laws and obligations among the good men and women of the land. Too often they have come to some of us, and after we have urged such objections to their measures, they seem to look upon us as enemies of our kind.

A spectacle occurred only a few weeks ago in the House of Representatives in Washington, to which I desire to call your attention in this connection. A majority of the House of Representatives, composed of members of both political parties, deliberately violated and trampled upon the rules of that House, which were made under the authority of the Constitution of the United States, for the government of the members and the proper and orderly conduct of the business of that House. They so violated the rules for their government for the purpose of passing an amending rule for the conduct of business, which may have been salutary and may not, that remains to be seen in the future. But the point is, that they did deliberately trample under foot and violate the rules of the House of Representatives, and that action was applauded all over this country. Nearly every newspaper and magazine and, I imagine, the great mass of you here, sympathized with that deliberate violation of the rules of the House.

But let me show you what the effect of that is. If that precedent be followed in the future, one-fifth of the membership of the House can prevent any public business being done in the House of Representatives, can completely choke the operations of our government; and in order to carry on its affairs, there must be again a deliberate violation of the rules of the House, or a still more flagrant violation of the Constitution of the United States, which requires that the yeas and nays be called if one-fifth of the members present demand it. If that violation be followed in the future, it means that there must be continued violations in order that the business of this country shall be properly performed. I submit to you, is it good public policy that the business of this country be carried on by violations of their laws by our great legislative bodies?

Friends, just think of it for a moment. Now, I spoke as a "regular" this time. I have not always been as particular, and that is why I can testify with the utmost freedom? I have voted on both sides of the fence. It was not so many years ago that I was one of

the insurgents, and deliberately violated the rulings made by the honored chairman of this meeting when he was right and I was wrong, and confession is good for the soul, ladies and gentlemen. But after all, such examples and such exhibitions are not the proper way to do public business and do not tend to instill the just respect which public officials ought to have throughout the country.

Now, there is another suggestion which is not official, yet I think it of great importance. There is a growing tendency among the young of to-day, in the coming generation, to have a lack of respect for law and public authority. We see it everywhere, in the streets, in public places, in public conveyances, and even in the homes. There is a lack of wholesome respect for authority, and lack of proper respect for persons, for the rights of property. What will be the results in the years that are to follow, when the responsibilities of active life shall be upon these young men and women, and the temptations come that always attend responsibility? Will they yield, or will they control themselves as our forefathers did, which control led to the foundation of our wonderful institutions and of our prosperity and progress and happiness under them. Too often nowadays comes the old maxim which I stated in the beginning, the end justifies the means. Now, it is easy for us to criticise the malefactors of great wealth. It is easy to criticise those who lead the mob, to anathematize those who violate their great trust in official station, and those who violate their duty in the dissemination of news. It has not been easy on the other hand to criticise those who demand that the Constitution of the United States be violated, or who demand that the rules and order of business in a great legislative body should be trampled under foot. There does not seem to me to be the proper balance in the different kinds of criticism. As a reason for this difference it is contended, on the one hand, some classes are interested for profit, and violate the laws for such purposes, while on the other hand the other classes are interested for the public welfare. Do not you realize that the man who urges a violation of the constitution or the laws for the purpose of something that he openly states is for his own selfish interest, is not more culpable than the man who urges a violation of the constitution or the rules of the House or Senate, or any other great body ostensibly for the public welfare; and yet it may be for purposes just as mean, just as base, just as low, just as much for personal advantage as those who

violate the other classes of laws? It is not for us to weigh motives. It is not for us to scrutinize purposes. One may be just as mean and low and base as the other; and if that be true, what right has any of us, who have violated any of the authority or laws of our land to criticise the actions of any other class of violators? We in glass houses have no right to throw stones.

Friends, one thing we have no business to do in this country, and that is to fool ourselves. We have no business as patriotic Americans to act as Pharisees or hypocrites. There is only one thing which honest men and women can do, and that is to have a sincere, consistent respect and obedience for law and public authority everywhere we find it.

There is another suggestion and it is rather an odd one. One great manifestation of lack of respect for our law by Americans is by reason of and shown by the great mass of law which we have to respect. In our various states, every two years, and in our national legislature, there probably are turned out or placed upon the statute books more than ten thousand separate acts, and there are a host more in the great cities and towns and villages of our country, untold thousands of them. It is one of the distinctive evils of our legislative bodies, that too often the public ills are not properly considered and diagnosed, so that the proper remedies can be applied. Too often statutes are passed in state legislatures and in the national legislature without proper consideration, and too often they are passed through some personal ambition or some promise made in the exigency of a political campaign, or to gratify some personal friendship or vanity or a personal fad, or grudge, or grouch even. Too many statutes are passed of that kind, with the result that a great mass of law is placed upon our statute books, too much to be known and appreciated by the great mass of our people; and as some of it is injudicious, so that we do not care much about it, there has grown up a national and natural disrespect for that sort and all sorts of legislation. We cannot help it. It exists, and there ought to be a remedy somewhere.

For two or three centuries, in the early history of this continent, we did have a class of leaders of responsibility, men who stood for something, and whose position and influence and learning and patriotism were regarded. Perhaps no city in the land has produced more of that class of leaders than this great and patriotic city of

Philadelphia. They were members of the clergy, the bench and the bar, the medical men, the great scholars and teachers, the great literary men, the men who conducted the great newspapers. But during the last generation, that influence has largely diminished, and as it diminished, unfortunately the complexities of our public and private life have greatly increased. There has been a tremendous increase in the functions of government, state, national and municipal, and with this there necessarily must come a great increase of duty and responsibility upon the individual citizen, demanding the very highest qualities of personal honor and judgment and leadership, which seem, in the last few years, to have been unfortunately diminished. The result is that in many instances, the great masses of our people are being led by merely irresponsible magazines and newspapers, put forth for the purpose of selling, through sensations and headlines and cartoons, and not for the purpose of responsibly telling the people the truth. Thus the people do not have accurate information, they do not have the responsible leadership which has been at once the basis of our great power and progress and the glory of our institutions.

All this may sound like a wail of pessimism—what does not seem naturally to come from the prairies of the hopeful and breezy West, but I want to assure you, confidentially, that I do not mean all of it. We all agree, as the Vice-President stated, that at the basis of all our wonderful power and progress is the great true heart of the American people. We are all optimists, and we have every reason to be optimists, and we are going to be optimists. The heart of the American people is all right. They demand safe and sane and honest laws, they demand that they shall be enforced fully and fairly, except always that they shall not be enforced too strenuously as to themselves and their own interests. It is that exception which we are trying to eliminate, and whenever the attention of the people has been called to that exception anywhere in our land, whether in the great State of New York, under the leadership of that splendid governor there, or whether in the great nation of ours, under the leadership of that great President, now perhaps the hero of the world; or whether in my own state in the West, under the leadership of my friend and political opponent, Governor Johnson, wherever it may have been, the people have never failed to respond; so that, after all, this ailment of ours is only skin deep, a sort of national eczema, as it were, which will be eliminated if we have our attention properly

called to it. It should be the mission of every true American citizen to see that the right thing is done, to see that we appreciate our own personal responsibility in these matters, a personal responsibility which must be constantly applied in public and in private life. There is no mystery about this cure. It is as old as civilization. It is the foundation of the glory and greatness of this blessed republic. It was thundered down to the faithful from Mt. Sinai, and has been coming down the ages ever since. "The ways of the Lord are true and righteous altogether," and it is righteousness that exalteth a nation.

RESPECT FOR LAW IN THE UNITED STATES

III. ADDRESS BY ARTHUR VON BRIESEN, ESQ., President, Legal Aid Society, New York.

I am handicapped this evening because of the eminence of the gentlemen who spoke before me. The Vice-President of the United States, and one of our most distinguished senators have spoken, and here comes a poor private citizen to contradict them. Naturally, it is a difficult position.

I was asked to speak on the respect which the people of the United States have for law. In my connection with the Legal Aid Society of New York, thousands and tens of thousands of cases of the poor and helpless are brought to my attention, so that I have had unusual opportunities of judging of the respect for law which the people around me seem to have shown. But, of course, if we talk about respect for law, we must first ascertain, What is the law which we are to respect? What is that thing called "law?" Justinian had this to say some 1400 years ago upon that subject: He defined justice as the constant and impelling wish to render every man his due, and stated the maxims of law to be these: to live honestly, to hurt no one and to give every one his due. If that is the conception of law, it, of course, means principally that institution which makes us respect the rights of others.

In this country, as has already been stated, we are making a great many so-called laws. The legislatures of forty-six states and congress, influenced by its verbose members and others pass laws every year which, added to the ordinances enacted in cities and counties would make in printed form a column longer than the height of this room. Most of these laws have at the tail end the main sting, "*this act shall take effect immediately.*" Now, the citizens are supposed to know what that law is, still they do not know it. They have had no opportunity of learning of its existence. Apart from the fact that there are such a multitude of sometimes perfectly ridiculous enactments, there is this lack of preparation, the failure to give the citizen due warning. This shall be a crime and another thing shall be a misdemeanor from this day on, from this hour on,

and so every day of the year. Every hour of each day nearly, a new law is made which may make us all criminals without our knowing it. An illustration of the situation created by this sort of thing, "an act to take effect immediately," came to my notice, when in the State of New York an act was finally signed by the governor, a very good act and a very good governor, prohibiting betting at race courses. The act was signed by the governor at about two o'clock one afternoon and within three minutes the district attorney in Brooklyn received orders to enforce that law immediately and to arrest those who broke it. So the poor district attorney who had never read the law arrested a lot of people who had never read the law, and brought them before a judge, who at that time had not read the law, and who, when he did read it, held they had not broken it. Therefore, some remedy should be devised by which citizens should know in time, as is the case in some places, what the laws are, so that they should have an opportunity of discussing them as to their full text, before they go into effect.

Laws should be skillfully framed. They are not always skillfully framed. They are sometimes ridiculously framed, and the judges who have to deal with them are frequently of opposite opinions as to what a law intended. Of course, if that be the fact, and it is a fact known to me, then the lawmakers are guilty of carelessness, to say the least, in framing them.

We had an illustration of that last year. They gave us four constitutional amendments to vote on in New York last November, and I managed to get hold of them before the election, and studied them. Each of these constitutional amendments was about as long as a column in an ordinary newspaper. I painfully read each, three or four times, and when I got through I decided that I was utterly unable to understand the meaning of them. But to my great surprise, a few days before election the leading newspapers of New York came out with the statement that the second amendment was the one to vote for. Every one should vote for the second amendment they said, because that was calculated to increase the salaries of the Supreme Court Judges of New York who sat in *country* districts, and not to increase those of the justices who sat in the large *cities*. I was surprised to read this, because I had not succeeded in spelling that out of this particular amendment, but that is what the papers said. After election day it was announced that this particular amend-

ment amongst others, had been affirmatively voted upon and was now a part of the constitution of the state. A few days later one of the most eminent Judges of New York City stated to the Board of Estimate and Apportionment, Gentlemen, I am one of the Judges of the *City* of New York, and this amendment means that only *city* judges get an increased salary, and the *country* judges do not get it, so please pay me the increase.

That is the kind of stuff we get from our legislature, and that is the kind of stuff people get from most of their legislatures. Then look at the many paternal and maternal enactments. They have a law in Oklahoma providing that the bed sheets in hotels and boarding houses must be seven feet long. Every one goes to jail who has a shorter one. Chicago has passed an ordinance about the size of hat-pins. Such are the kind of laws passed, which no one esteems and no one can esteem. Therefore, if we accept the proper definition of the term "law," see to it that proper laws, properly shaped, are brought to our knowledge, and that undue attempts to stimulate a picayune interference with our happiness and our individual freedom will not continue to be placed upon the statute books.

I was in Portland, Maine, three years ago, and found that the State of Maine was what they called a Prohibition State, that is, a state which prohibited any one from drinking a glass of wine or ale, which might be wholesome, but the law was so arranged that every one might drink whisky and that of the worst and most harmful kind. A friend of mine, in the city government of Portland, told me that each and every year during his administration as mayor of that city, over twenty-five per cent. of the inhabitants of Portland were put in jail for drunkenness. Here was, therefore, a whole city of law breakers, resulting in the moral destruction almost, of a large number of men who without such stupid laws would have been able to exercise their self-control and to conduct themselves just as we do, without restraint. Though all sorts of liquid and solid nourishment and of temptations face us, yet we know how to resist them. The law should make for decent self-control in order to produce a good crop of citizens. By the prohibitory law we take the opportunity away from people to exercise their manly qualities, and to improve their moral status.

There is another aspect: that while the majority says, you shall not drink, think what would happen if the majority should ever

change, and should order: "you must drink." Such things could happen.

You see disrespect for law, therefore, in all the cases I have given you. You see it in these prohibitive measures; you see it in lynch law excesses, in strikers' excesses, in smuggling tendencies, all evidences of the greed of man to rush to his advantage, law or no law, court or no court.

All this is largely due to a lack of healthy public opinion. It is public opinion that really makes the law, and not so much the lawmaker. On the statute books of Connecticut are still some of those "blue laws," which if enforced would have some of us enjoying the burning of witches and the like. They are not enforced. Why should they remain on the statute books? Would it not be an honest thing to take them off, and not encumber our lives with statutes requiring citizens to adapt themselves to laws that are no longer enforceable, because public opinion forbids?

In this matter of public opinion, I would like to give you a few illustrations, if my time permits. Whenever in New York a boy steals an apple from a pushcart man, the crowd laughs at the antics of the owner in his effort to protect his own and sides invariably with the little thief. In the dormitories of colleges I frequently see the rooms of students covered with so-called "trophies," things stolen from shop-windows, signs taken from the tailor or laundryman, spoons from hotels and restaurants. All that is looked upon by our public opinion as only one of those little excesses of youth, at which one may laugh; but the youth becomes a man, and how can he be expected to respect the rights of others as a man if he has not done so in his youth?

You invite the best friends of the family to weddings, and then hire detectives for the purpose of seeing that these best friends do not steal the silver. Do you suspect your best friends? What are we coming to? Is this a healthy public opinion?

We impoverish the community by allowing this kind of grafting. I have seen in one little foreign country a large revenue derived from fruit trees planted on the public highway, each tree being rented by the year as far as fruit is concerned; and no one thinks of stealing that fruit, nor would children steal it. Now, I say that when we get to the point that we can reduce our taxes, our tariff, our cost of living, by deriving a substantial revenue from public property

which is submitted to public protection, then we may see the beginning of true respect for law, with all resulting benefits.

I find the difficulty lies with the education of the children. I do not mean school instruction, but the home education of the child. That is where I look for improvement. That is where to place the responsibility. If there is disrespect for law, if there is lack of respect for the rights of others, if there is a corresponding impoverishment of the public, it is due to the fact that parents, as a whole, do not allow their children to be brought up considerate, respectful and upright in all things. I call for that kind of improvement. The Church alone cannot do it, else it would have done it. Men who seek to advance their own individual and supposed interests at the expense of their neighbors and who, therefore, are the men who do not respect the rights of others, may be looked upon as public enemies. Their kind must be eradicated and supplanted by the application of high moral principles to the development of the child. Every child embodies the germs for a noble and likewise the germs for an ignoble development. It is the duty of parents to foster the one and suppress the other. By neglecting this duty the brutal instincts are permitted to overshadow the longing for higher moral attainments as weeds keep down the most precious flowers. I hope that the importance of this great truth may sink deep into the hearts of the best among us, so that gradually processes may be developed by and through which every individual in the country will become a respecter of law, and therefore a respecter of the rights of his neighbors. In spite of the fact that we are a great nation and have accomplished great things, we can still advance and do greater things; and the greatest we can do is to bring up our boys so that every one, with healthy body, can be an Abraham Lincoln in point of morality and desire to be just in his doings to others.

RESPECT FOR LAW IN THE UNITED STATES

IV. ADDRESS BY PROFESSOR GEORGE W. KIRCHWEY,
Dean of the School of Law, Columbia University, New York.

Mr. Chairman, Ladies and Gentlemen:

Had I the tongues of men and of angels, I could hardly hope to rise to the high pinnacle of expectation which the eloquent language of the Vice-President in introducing me must have raised in your minds and hearts. Like most of those who preceded me, I, too, am a sophisticated rhetorician apt to be intoxicated by the exuberance of my own verbosity. But not holding any official station, I am cabined, cribbed and confined within the limits of time, and may not encroach upon the purlieus of eternity in speaking to-night. It is a purely parenthetical observation, but I could not help wondering, as I sat here, what limits of time would have been required if the distinguished Vice-President of the United States had come here to make a speech, instead of coming merely to introduce the speakers. However, as we are in the habit of saying in that somewhat flippant city from which I have come to these more serious precincts, the hour of ten-fifteen is only "the shank of the evening," and therefore I shall not be discouraged by the apparent limitation put upon my eloquence by the presence of the Vice-President's watch upon the table. As he has intimated to you, he trusts the public men who stand upon the platform not to steal his time. He laid no such restriction upon those who come from private life.

I have found it very easy, indeed, being a person of easy temper, to agree with everything that has been said here this evening. I am as patriotic and as optimistic as the Vice-President of the United States. Perhaps I may be permitted to add that my optimism was somewhat reinforced by learning that the Constitution of the United States is held in high regard under the present administration at Washington. I am not only as optimistic as the Vice-President, I am at the same time as pessimistic as my friend, Mr. von Briesen. Nay, I am as optimistic as the distinguished Congressman from Minnesota was in the first half of his speech

and as pessimistic as he was in the latter half. I have oscillated from one extreme to the other. My favorite definition of the optimist is, "the man who has just been talking with a pessimist"; and so hereafter when I wish to pass from grave to gay, from lively to severe, I shall only have to engage in conversation with myself.

We have heard a great deal of talk of late about the lack of respect for law in our blessed, steel-producing country. There is not so much of that to-day as there was just prior to the last election, when there were various movements abroad to tie the courts hand and foot. If I remember rightly, these movements were more active before it was known who would be the nominee of the Republican party for the Presidency, than they were at a subsequent period; but, however that may be, the net result is that there has been a considerable falling off of late in the popular outcry against the law and the administration of the law.

We are pointed back from time to time—by our pessimists—to a golden age, when all men except those who felt the halter draw, had good opinion of the law. I cannot help wondering whether that is not an illusion—whether, as a matter of fact, the free and independent American, with his insistence on having his own way, his irritation at legal as well as illegal restraint, has not always maintained very much the same attitude of free and independent criticism of the law which he exercises at the present time. He believes that the law should be rigorously enforced—against everybody, but himself. He demands for himself only justice—the justice that he thinks he is entitled to. I doubt very much if there has been any very considerable change in our attitude in the hundred years and upwards during which the present framework of government, as a means of creating respect for law, has continued. I doubt very much if the law is not quite as much entitled to respect to-day as it ever was before. Having thus made my profession of faith I will not follow my distinguished predecessors in lamenting the lack of reverence for the law among our people, nor will I seek to devise methods of education whereby our children shall have a reverence for the law of the land and those who administer it, inculcated in their youthful minds and hearts. Rather would I occupy a few minutes of your time in

pointing out how, in my opinion, the law may be made respected by being made worthy of respect.

It seems to me that the attitude of our lawyers and judges leaves something to be desired, when they animadvert upon those who criticise the law and its administration. As has been pointed out by one of the speakers of the evening, the law is the expression of the popular will, and the law courts are the instruments created by the people for giving effect to the popular will; and, this being so, will someone, whether it be judge or lawyer, tell me why the people should be precluded from criticising their own officers, appointed by them for the purpose of putting their will into effect. Why should we be estopped from criticising the law which we have ourselves created? It was said very wisely by the distinguished representative from Minnesota—and I wish to record my hearty assent to the proposition—that respect for law in this country is due to the fact that the law is the expression of the public will; the corollary to that proposition, to my mind, is that lack of respect for law is due to the fact that the law as actually administered by the courts fails to be an adequate and accurate expression of the public will? Now, why does it fail to be an adequate expression of the public will? Mainly, I believe, because of the way in which our judiciary, which is under our legal system our principal apparatus for producing law, has unnecessarily and unwisely restricted itself in the administration of justice.

We speak of the administration of justice in a vague and popular way; almost any judge or lawyer will tell you that what you really mean is the administration of law; and somehow or other, in a hazy, confused sort of way, he assumes law and justice to be identical. Now, as a lawyer and a teacher of law, it would not become me to say that there is not, somewhere, a connection between these two. There is no doubt whatsoever that in the law you will find some more or less rudimentary notions of justice; nor is there any doubt that justice is upon the whole better administered through law than it could be in any other way, and so it will be, until the perfect judge, for whom the ages have waited, appears in the seat of justice.

I hope it will not surprise you unduly if I tell you that, in deciding the cases submitted to them, our judges—it is true of

some of our judges in New York, and it is certainly true of your judges in Pennsylvania—really aim to do justice. They are not aware of that fact, and the lawyers who appear before them, have too much respect for the judicial ermine ever to suggest that that is the function of the court—really to administer justice between man and man in the case pending. The function of the judge is esteemed to be, is declared by him to be, automatically to declare the law applicable in any case; and if you ask him where he gets the law, he will point to a long array of judicial decisions, reaching back, as he believes, to the beginning of time. As a matter of fact the habit of citing and relying on precedents is a much more recent one than it is generally assumed to be, dating back only to the time of Lord Coke in the seventeenth century.

Now, I firmly believe that justice can be administered only through a regular legal procedure, and only by the application of the principles of law; and on the other hand, I believe quite as firmly that the real function of the judge is to administer justice, and not merely to ascertain from the books of the law what the law is, and then technically to apply it. There is an inevitable tendency in every legal system toward ossification. That is due to an inveterate tendency of the human mind to play the game known as "Follow the Leader." We operate intellectually, as we do in other ways, along the line of least resistance. We are an economical race, economical of effort, so we prefer to follow someone else's lead rather than to strike out for ourselves. The result is that if a judicial decision is once rendered in a case in which there is no law before that decision is rendered—and this is true of practically all cases, if I may express my opinion incidentally on that point—the judicial decision once rendered becomes stored in the judicial mind, and is copied more or less automatically in every case more or less resembling the one in which the decision was rendered. And so case after case follows that original one, and finally we find the rules of law hardening, crystallizing, solidifying, until they have lost the flexibility absolutely requisite in order to make them available as instrumentalities of justice, in the multifarious and complex affairs of life.

We have devised various methods of obviating that difficulty. Away back in the dim and distant period of the Norman rule in

England, a statute was passed directing the clerks of chancery to issue new writs in cases similar to those in which they had previously been issuing writs, but not identical therewith. From that simple fact there sprung a whole range of new remedies of which we still see the virtue and the fruit to-day. It was a self-conscious effort to relax the inflexibility of our common law system; and you will note that that tendency dates back to a very early period in our legal history.

At a later date, when our legal system had again, under the operation of this principle of *stare decisis*, as the lawyers call it, become fixed and inflexible, the system of equity was evolved in the courts of chancery; and for several centuries the principles of equity have operated to mitigate the rigors of the common law. And yet a few years ago, it was possible for the Court of Appeals of the State of New York in a case of considerable public notoriety, to declare that a young woman whose beauty had been made an article of merchandise, through the stealing and publication of her portrait for advertising purposes, had no remedy in the courts of equity in the State of New York, there being no precedent for relief in such a case; and the court held that if there was to be any change in the law established by the precedents in equity, it was for the legislature to make that change. Equity also has lost its flexibility; the common law has lost its flexibility; where shall we turn next? To the legislature, says the New York Court of Appeals, and so say many of you. We have heard to-night that something like ten thousand statutes are enacted in this country every two years. Of this number, eight thousand are perhaps, from our present point of view, negligible, being special or local in character. About two thousand are general in character and have the force of law. Of these, how large a proportion do you suppose really affect the law under which we live and by which we are governed in our private relations? About seven and one-half per cent., we are told, and about one-third of that number will either be nullified by the courts or will have to be hammered into shape by the courts before they can be put to any use in the community. May we not say, then, that legislation is as much a failure as equity has been, as the statute to which I have referred, proved to be, as a device for modifying permanently the rigors and inflexibility of our legal system?

What remains? There is no other artificial device that I know of to bring about the condition of affairs that must be effected in order that our law shall escape the criticism which we aim to avert by becoming the real handmaid of society in its onward and upward march. The only remedy that I can see is for our courts to realize once for all that the power to do justice, greater than the power to administer law, is the power that is really committed to them; that a precedent is only a signpost pointing out the direction in which the feet of justice must go, not a rule binding upon the mind and conscience of the judge; that our courts are set in their high places as interpreters of the popular sense of morality and right and the popular sense of justice not as interpreters of obscure oracles handed down from a remote antiquity. They will receive and they will deserve respect so long as the law which they lay down is the expression of the public will and no longer.

They have it in their power to make that law, day by day, week by week, year by year, a more and more prompt and a more and more accurate expression of the popular will; and, in my opinion, just in proportion as they realize the duty that is laid upon them, just in proportion as they exercise the power really confided to them, just in proportion as they succeed in a conscious effort to administer justice rather than law, will they make the law, what it will then deserve to be, respected throughout the length and breadth of the land.